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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS RAMIREZ,

Defendant and Appellant.

G051740

(Super. Ct. No. 14WF0450)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Thomas A. Glazier, Judge. Affirmed.

Jennifer A. Gambale, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and
Kristen Hernandez, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Carlos Ramirez appeals from an order denying his petition under Penal Code section 1170.18, subdivision (a) for, inter alia, the reduction of his felony conviction for forgery to a misdemeanor. (All further statutory references are to the Penal Code.) We affirm the order because Ramirez failed to carry his burden of establishing eligibility for relief under Proposition 47, the Safe Neighborhoods and Schools Act (§ 1170.18), by producing evidence that the value of the check that he forged did not exceed \$950.

BACKGROUND

In February 2014, Ramirez was charged in a felony complaint with one felony count each of second degree commercial burglary in violation of sections 459 and 460, subdivision (b); forgery in violation of section 470, subdivision (d); forgery in violation of section 476; and attempted grand theft in violation of sections 664, subdivision (a) and 487, subdivision (a). The felony complaint also alleged that Ramirez had served two prior prison terms within the meaning of section 667.5, subdivision (b).

Ramirez pleaded guilty to committing the forgery offense in violation of section 476, stating the following as the factual basis for his guilty plea: “In Orange County, California, on 2/4/14 I willfully, knowingly and unlawfully, with the intent to defraud, passed a forged check.” The prosecution moved to dismiss the remaining three counts and the two prior prison term enhancement allegations; the trial court granted that motion. Ramirez was sentenced to the middle prison term of two years.

In January 2015, Ramirez filed a petition under section 1170.18, subdivision (a), seeking to have his felony conviction recalled and reduced to a misdemeanor (the petition). The prosecution opposed the petition because the “value of check is over \$950.” (There is no evidence in the record regarding the amount of the check at issue.) The trial court denied the petition. Ramirez appealed.

DISCUSSION

In 2014, the voters enacted Proposition 47, which makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089, 1091.) Those offenses previously had been designated either as felonies or as crimes that can be punished as either felonies or misdemeanors. (*Id.* at p. 1091.) Proposition 47 added, among other things, sections 490.2 and 1170.18 to the Penal Code. (*People v. Rivera, supra*, at pp. 1091-1092.)

Section 490.2, subdivision (a) provides that “obtaining any property by theft” constitutes a misdemeanor where the value of the property taken does not exceed \$950. (See *People v. Acosta* (2015) 242 Cal.App.4th 521, 525.) Section 1170.18, subdivision (a) provides in part: “A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Section[] . . . 473 . . . as th[at] section[] ha[s] been amended or added by this act.”

Section 473, as amended by Proposition 47, provides in part: “(a) Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170. [¶] (b) Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order, *where the value of the check, bond, bank bill, note, cashier’s check, traveler’s check, or money order does not exceed nine hundred fifty dollars (\$950)*, shall be punishable by imprisonment in a county jail for not more than one year.” (Italics added.)

No evidence in the record shows the value of the check that Ramirez forged. Ramirez had the burden of showing the facts establishing his eligibility for relief under Proposition 47, including that the value of the forged check did not exceed \$950. (See *People v. Sherow* (2015) 239 Cal.App.4th 875, 877 [section 1170.18 places the burden on the petitioner to show that the value of the item at issue did not exceed \$950]; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450 [same]; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137 [same]; *People v. Bush* (2016) 245 Cal.App.4th 992, 1007 [same].) Because Ramirez failed to carry that burden, the petition was properly denied.

Citing *People v. Cuellar* (2008) 165 Cal.App.4th 833, 838, Ramirez argues, “a check, forged or not, is merely an order to pay and has ‘no value’ unless and until it is accepted by a third party and exchanged for a monetary amount. [Citation.] The check possessed by Mr. Ramirez was never accepted by anyone nor exchanged for any monetary value, let alone a value in excess of \$950.00.” *People v. Cuellar* is distinguishable because it concerned a charge of grand theft whereby “property is taken from the person of another” in violation of section 487, subdivision (c), not the forgery statute. (*People v. Cuellar, supra*, at p. 836.) In any event, section 476, in defining forgery, does not require that the forged instrument be accepted. Section 476 provides: “Every person who makes, passes, utters, or publishes, with intent to defraud any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of forgery.” Ramirez’s proposed construction of the law would impose an additional element for felony forgery convictions (e.g., that the forged instrument be accepted or cashed).

In *People v. Salmorin* (2016) 1 Cal.App.5th 738, 744-745, the appellate court rejected a similar argument raised in that case, holding in part: “The trial court correctly ruled, however, that, for purposes of resentencing under Proposition 47, the value of a forged check is the face value of the check. Under Proposition 47, the market value of any forged instrument listed in section 473, subdivision (b), may or may not correspond to the face value of the instrument, depending on the existence of a secondary market or other evidence of value. In the context of forgery, however, the word ‘value’ as used in section 473, subdivision (b), corresponds to the stated value or face value of the check. The trial court did not err in considering the face value of the forged checks for purposes of determining [the defendant]’s eligibility for Proposition 47 resentencing.” We agree with this analysis and find no error.

DISPOSITION

The postjudgment order is affirmed. This affirmance is without prejudice to the trial court’s consideration of a subsequent petition by Ramirez, which offers evidence of his eligibility for the requested relief.

FYBEL, J.

WE CONCUR:

O’LEARY, P. J.

IKOLA, J.